TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 772

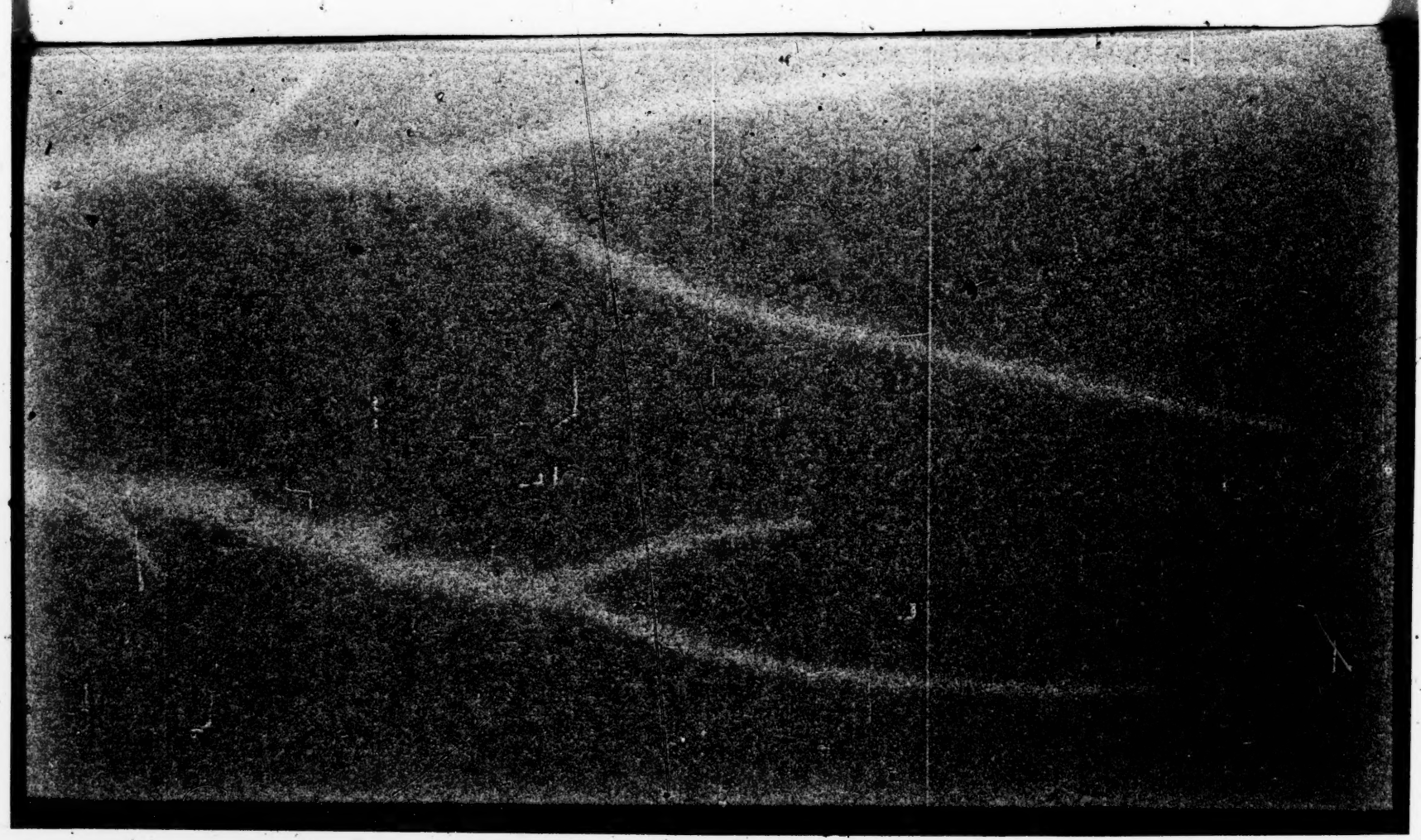
HOWARD MORF, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF PACIFIC WHOLESALE AUTOMOBILE COMPANY, APPELLANT,

vs.

JOHN D. BINGAMAN, COMMISSIONER OF REVENUE FOR THE STATE OF NEW MEXICO

APPPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW MEXICO

FILED FEBRUARY 21, 1936.



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[fol. 3]

IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO

HOWARD MORF, Doing Business under the Firm Name and Style of Pacific Wholesale Automobile Company, Plaintiff,

vs.

JOHN D. BINGAMAN, Commissioner of Revenue for the State of New Mexico, Defendant

COMPLAINT IN EQUITY—Filed Aug. 23, 1935

Comes now the plaintiff, and for cause of action against the defendant alleges as follows, to-wit:

I

That plaintiff is a resident and a citizen of the City of Los Angeles, County of Los Angeles, State of California; that plaintiff is engaged in business under the firm name and style of Pacific Wholesale Automobile Company in said City, County and State aforesaid; that plaintiff has duly and regularly filed and registered said firm name as required by the laws of the State of California; that defendant, John D. Bingaman, is the duly appointed, qualified and acting Commissioner of Revenue for the State of New Mexico and is a resident of said state and that there is a diversity of citizenship.

II

That the amount of money involved in this litigation is in excess of Three Thousand Dollars, exclusive of costs and [fol. 4] interest.

III

That at the 12th regular session of the legislature of the State of New Mexico, an Act to amend Chapter 139 of the Session Laws of 1933, State of New Mexico, relating to registration fees for motor vehicles, was passed, being House Bill #71, Chapter 56, Session Laws of 1935 of the

State of New Mexico, which Act was approved February 21st, 1935 and has become a law of the State of New Mexico; that a copy of said Act is attached hereto marked Exhibit "A" and made a part hereof.

IV

That said Act, among other things, provides as follows, to-wit:

"(d) No person, firm or corporation shall use the highways of the State of New Mexico for the transportation of any motor vehicle on its own wheels for the purpose of selling or offering for sale to or by any agent, dealer, purchaser or prospective purchaser whether such agent, dealer, purchaser or prospective purchaser be located within or without this state unless such motor vehicle either:

1. Is licensed by the State of New Mexico; or

2. Is owned by an automobile dealer, duly licensed by the State of New Mexico and is operated under a dealer's license duly issued to such dealer; or

3. A special permit for the use of the highways of this state for the transportation of such vehicle, in the manner in which the same is being transported, has first been obtained and the fee therefor has been paid as hereinafter specified.

Special permits for the use of said highways in the transportation of such vehicles shall be issued by the commis- [fol. 5] sioner of revenue of the State of New Mexico upon application on such form as said commissioner may prescribe and upon payment of a fee of $7.50 for each such vehicle transported by use of its own power and a fee of $5.00 for each such vehicle towed or drawn by another vehicle and not transported in whole or in part by the use of its own power. All permits so issued shall be evidenced by a certificate, issued by said commissioner, which shall show upon the face thereof the registration number assigned to each such vehicle, the name and address of the owner thereof, the manner of transportation thereby authorized and a description of the vehicle so registered, including the engine number thereof. Such certificate shall be carried at all times by the person in charge of such vehicle or vehicles. A suitable tag or placard shall be issued by the commis-

sioner with such certificate and shall be at all times displayed on each such vehicle, whether the same is being so transported singly or in a caravan. No such permit, certificate, tag or placard shall be issued upon or in connection with the transportation of any vehicle other than the one for which the same is issued."

V

That plaintiff is engaged in the business of buying, selling and trading of automobiles and his principal place of business is in the City of Los Angeles, County of Los Angeles, State of California; that he has complied with the laws of said City, County and State in regards to such business.

That he has been engaged in such business for several years last past and has succeeded in building up a business, the value of which he alleges to be in excess of $25,000.00, and from which he has derived a good income and livelihood.

VI

That plaintiff is not now, nor has he ever been, engaged [fol. 6] in business in the State of New Mexico.

VII

That plaintiff, in the operation and conduct of his said business, on numerous and divers occasions, has purchased and desires to continue to purchase, automobiles in various Eastern and Southern States of the United States, and drives or causes them to be driven from said places of purchase to the City of Los Angeles, State of California, for the purpose of sale and trade; that during the period said automobiles are so driven from various points of purchase in other states to the State of California, plaintiff is engaged solely in interstate commerce; that the purchasing of said automobile as aforesaid is essentially necessary to the continued conduct of his business, and that if he is deprived of the right to drive or cause said automobiles to be driven from the point of purchase as aforesaid to the State of California, or if he is required to pay an exorbitant tax in interstate commerce, he will lose his business and thereby suffer an irreparable injury.